

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
AT COLUMBUS

IN RE:

Gary Lee Burba
Mary Ellen Burba
aka Mary Ellen McKirgan
aka Mary Ellen Hart,

Debtor.

Case No. 2:19-bk-54221

Chapter 7

Judge C. Kathryn Preston

**MOTION OF BAYVIEW LOAN SERVICING,
LLC FOR RELIEF FROM THE AUTOMATIC
STAY**

**(PROPERTY LOCATED AT 12000
SUMMERHAVEN DRIVE, HILLSBORO, OH
45133)**

Bayview Loan Servicing, LLC (the "Movant") moves this Court, under §§ 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 6007 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. A copy of the General Warranty Deed to the subject property is attached as **Exhibit A**. On December 13, 2012 the Debtors listed above (collectively, the "Debtors") obtained a loan

from JPMorgan Chase Bank, N.A. in the amount of \$97,700.00. Such loan was evidenced by a promissory note dated December 13, 2012, (the "Note"), a copy of which is attached as **Exhibit B**.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtors executed a Mortgage dated December 13, 2012 (the "Security Agreement"). The Security Agreement granted a lien on the real and/or personal property (the "Collateral") owned by the Debtors, located at 12000 Summerhaven Drive, Hillsboro, OH 45133, and more fully described in the Security Agreement.

4. The lien created by the Security Agreement was duly perfected by the filing of the Security Agreement in the Office of the Highland County Recorder on December 28, 2012. A copy of the Security Agreement is attached to this motion as **Exhibit C**. The lien is the 1st lien on the Collateral.

5. The Note and Security Agreement were transferred as follows:

The Note was transferred from JPMorgan Chase Bank, N.A. to Movant herein as evidenced by the blank endorsement on the Note. **See Exhibit B.**

The Mortgage was transferred from JPMorgan Chase Bank, National Association to Bayview Loan Servicing, LLC as evidenced by the assignment recorded on 04/17/2019 as evidenced by the document attached hereto as **Exhibit D.**

6. The value of the Collateral is \$81,400.00. This valuation is based on Debtor's Schedules.

7. As of July 1, 2019, there is due and owing on the Note the outstanding principal and interest balance of \$86,757.50.

8. Other parties known to have an interest in the Collateral are:

9. The Movant is entitled to relief from the automatic stay under §§ 362(d)(1) and/or 362(d)(2) for these reasons:

Debtors have failed to provide adequate protection for the lien held by the Movant for the reasons set forth below.

This case is a Chapter 7 wherein debtor is in default for payment on the mortgage loan wherein the last payment was applied to the payment due for the month of December 1, 2018 and there is no equity for the benefit of the estate.

10. This Motion does not seek to affect the rights of the Chapter 7 Trustee.

11. Pursuant to LBR 4001-1(a)(1) Movant has completed the Exhibit and Worksheet attached hereto as **Exhibit E**.

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of §362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

/s/Joel K. Jensen

Joel K. Jensen, Case Attorney
Ohio Supreme Court Reg. No. 0029302
Attorney for Bayview Loan Servicing, LLC
LERNER, SAMPSON & ROTHFUSS
P.O. Box 5480
Cincinnati, OH 45201-5480
(513) 241-3100
(513) 241-4094 Fax
(877) 661-7891 Toll Free Fax
sohbk@lsrlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Relief from Stay was served electronically on the date of filing through the court's ECF System on all ECF participants registered in this case at the email address registered with the court and by ordinary U.S. Mail on August 26, 2019 addressed to:

Gary Lee Burba
7140 E. Main Street
South Solon, OH 43153

Mary Ellen Burba
aka Mary Ellen McKirgan
aka Mary Ellen Hart
7140 E. Main Street
South Solon, OH 43153

/s/Joel K. Jensen

Joel K. Jensen, Case Attorney
Ohio Supreme Court Reg. No. 0029302
Attorney for Bayview Loan Servicing, LLC
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**NOTICE OF FILING OF MOTION OF
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**(PROPERTY LOCATED AT 12000
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OFFICIAL FORM 20A

Bayview Loan Servicing, LLC has filed papers with the Court to obtain relief from the automatic stay.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the Court to consider your views on the motion for relief from stay, then within twenty-one (21) days from the date of this notice, you or your attorney must:

- * File with the Court a written request for a hearing, and a written response setting forth the specific grounds explaining your position at:

Columbus Bankruptcy Court
U.S. Bankruptcy Court
170 North High Street
Columbus, OH 43215

If you mail your request or response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Joel K. Jensen (0029302)
Trial Counsel - Attorney for Movant
LERNER, SAMPSON & ROTHFUSS
P.O. Box 5480
Cincinnati, OH 45202-4007
sohbk@lsrlaw.com

Joshua James Brown, Esq., Attorney for Debtor
500 S. Front Street
Suite 1200
Columbus, OH 43215
josh@joshbrownesq.com

Larry J. McClatchey, Trustee
65 East State Street
Suite 1800
Columbus, OH 43215
BGibson@keglerbrown.com

Office of the U.S. Trustee
170 N. High Street
Suite 200
Columbus, OH 43215
ustpreion09.cb.ecf@usdoj.gov

at the addresses listed thereon.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DATED: August 26, 2019

/s/Joel K. Jensen

Joel K. Jensen, Case Attorney
Ohio Supreme Court Reg. No. 0029302
Attorney for Bayview Loan Servicing, LLC
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